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Am-Pro Protective Agency, Inc. and Brotherhood of Security Personnel Officers & Guards International Union. Case 2-CA-29063

July 5, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Pursuant to a charge and first amended charge filed on January 23 and February 22, 1996, respectively, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on February 28, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 2-RC-21511. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On May 28, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On May 29, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer, the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the Union's request for information. The Respondent admits that, by letter dated

January 11, 1996, the Union requested that the Respondent furnish it with the following information:

- (1) All wages the Security Officers at the U.N. Mission [receive].
- (2) When was last increase received.
- (3) Copy of Welfare and Pension Plan, and Life Insurance Plan.
- (4) Vacation, holiday, personal, and sick days that the men are presently receiving.
- (5) Evening and night differential.

The Respondent's answer neither specifically admits nor denies that the foregoing information is relevant and necessary for the Union's role as the exclusive bargaining representative, but merely denies that the Union is the lawful exclusive collective-bargaining representative of the unit employees. We therefore find that the Respondent has effectively admitted that the information requested is necessary and relevant. See Section 102.20 of the Board's Rules. In any event, it is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished on request, and we so find. See, e.g., *Trustees of the Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a South Carolina corporation, with an office and place of business located at 799 United Nations Plaza, is engaged in the business of providing security services. Annually, in the course and conduct of its business operations, the Respondent purchases and receives at its New York, New York facility goods and supplies valued in excess of \$50,000 directly from suppliers located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act² and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ Member Cohen did not participate in the underlying representation case, and he does not necessarily agree with that decision. However, he agrees with his colleagues that the Respondent has raised no new issues in this "technical" 8(a)(5) case. Accordingly, he concurs in this Decision and Order.

² The Respondent's answer admits all factual commerce allegations of the complaint and the allegation that it is engaged in commerce within the meaning of Sec. 2(6) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held May 3, 1995, the Union was certified on September 27, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time security officers and security personnel, including security trainees and diplomatic security technicians, employed by the Employer at 799 United Nations Plaza and Waldorf Astoria facilities, excluding all other employees, supervisors, and professional employees as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since about January 11 and February 16, 1996, respectively, the Respondent has failed and refused to furnish the Union with necessary and relevant information and to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 11 and February 16, 1996, respectively, to furnish the Union with necessary and relevant information and to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Am-Pro Protective Agency, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Brotherhood of Security Personnel Officers & Guards International Union as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time security officers and security personnel, including security trainees and diplomatic security technicians, employed by the Employer at 799 United Nations Plaza and Waldorf Astoria facilities, excluding all other employees, supervisors, and professional employees as defined in the Act.

(b) Furnish the Union with the information that it requested on January 11, 1996.

(c) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 23, 1996.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 5, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Brotherhood of Security Personnel Officers & Guards International Union as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time security officers and security personnel, including security trainees and diplomatic security technicians, employed by us at our 799 United Nations Plaza and Waldorf Astoria facilities, excluding all other employees, supervisors, and professional employees as defined in the Act.

WE WILL furnish the Union with the information that it requested on January 11, 1996.

AM-PRO PROTECTIVE AGENCY, INC.